

Exhibit G

In The Matter Of:

***(C-"FHFA-ALL") FEDERAL HOUSING FINANCE AGENCY,
ETC.***

GARY KAIN
November 7, 2013

MERRILL CORPORATION
Legalink, Inc.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
FEDERAL HOUSING FINANCE AGENCY, etc., :
Plaintiff, :
vs. : 11 Civ. 6189
HSBC NORTH AMERICA HOLDINGS, INC., et : (DLC)
al., :
Defendants. :

-----x
FEDERAL HOUSING FINANCE AGENCY, etc., :
Plaintiff :
vs. : 11 Civ. 6190
BARCLAYS BANK PLC, et al., : (DLC)
Defendants. :

-----x
FEDERAL HOUSING FINANCE AGENCY, etc., :
Plaintiff, :
vs. : 11 Civ. 6192
DEUTSCHE BANK AG, et al., : (DLC)
Defendants. :

-----x
VOLUME II Videotaped Deposition of GARY KAIN
Thursday, November 7, 2013

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1 -----
2 FEDERAL HOUSING FINANCE AGENCY, etc., :
3 Plaintiff, :
4 vs. : 11 Civ. 6193
5 FIRST HORIZON NATIONAL CORP., et al., : (DLC)
6 Defendants. :
7 -----x
8 FEDERAL HOUSING FINANCE AGENCY, etc., :
9 Plaintiff, :
10 vs. : 11 Civ. 6195
11 BANK OF AMERICA CORP., et al. :
12 Defendants. :
13 -----x
14 FEDERAL HOUSING FINANCE AGENCY, etc., :
15 Plaintiff, :
16 vs. : 11 Civ. 6198
17 GOLDMAN, SACHS & CO., et al., : (DLC)
18 Defendants. :
19 -----x
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1 -----x
2 FEDERAL HOUSING FINANCE AGENCY, etc., :
3 Plaintiff, :
4 vs. : 11 Civ. 6200
5 CREDIT SUISSE HOLDINGS (USA), INC., : (DLC)
6 et al., :
7 Defendants. :

8 -----x
9 FEDERAL HOUSING FINANCE AGENCY, etc., :
10 Plaintiff, :
11 vs. : 11 Civ. 6201
12 NOMURA HOLDING AMERICA, INC., et al., : (DLC)
13 Defendants. :

14 -----x
15 FEDERAL HOUSING FINANCE AGENCY, etc., :
16 Plaintiff, :
17 vs. : 11 Civ. 6202
18 MERRILL LYNCH & CO., INC., et al., : (DLC)
19 Defendants. :

20 -----x

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1 -----x
2 FEDERAL HOUSING FINANCE AGENCY, etc., :
3 Plaintiff, :
4 vs. : 11 Civ. 6203
5 SG AMERICAS, INC., et al., : (DLC)
6 Defendants. :
7 -----x
8 FEDERAL HOUSING FINANCE AGENCY, etc., :
9 Plaintiff, :
10 vs. : 11 Civ. 6739
11 MORGAN STANLEY, et al., : (DLC)
12 Defendants. :
13 -----x
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1 -----x
2 FEDERAL HOUSING FINANCE AGENCY, :
3 AS CONSERVATOR FOR THE FEDERAL HOME :
4 LOAN MORTGAGE CORPORATION :
5 Plaintiff, :
6 vs. : 11 Civ. 7010
7 ALLY FINANCIAL, INC., GMAC MORTGAGE : (DLC)
8 GROUP, INC., ALLY SECURITIES, LLC :
9 J.P. MORGAN SECURITIES, LLC :
10 f/k/a J.P. MORGAN SECURITIES, INC., :
11 and as successor-in-interest to :
12 BEAR, STEARNS & CO., INC., :
13 CREDIT SUISSE SECURITIES (USA) LLC, :
14 f/k/a CREDIT SUISSE FIRST BOSTON, LLC, :
15 RBS SECURITIES, INC., f/k/a GREENWICH :
16 CAPITAL MARKETS, INC., CITIGROUP :
17 GLOBAL MARKETS, INC., BARCLAYS :
18 CAPITAL INC., UBS SECURITIES LLC, :
19 and GOLDMAN, SACHS & CO. :
20 Defendants :
21 -----x
22
23
24
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1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF CONNECTICUT
3 -----x
4 FEDERAL HOUSING FINANCE AGENCY, :
5 etc., :
6 Plaintiff, :
7 vs. : Case No.
8 THE ROYAL BANK OF SCOTLAND GROUP : 3:11-cv-01383-AWT
9 PLC, et al., :
10 Defendants. :
11 -----x

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VOLUME II

15

Videotaped Deposition of Gary Kain

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Washington, D.C.

17

November 7, 2013

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9:09 a.m.

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Job No. 239740

24

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25

Reported by: Bonnie L. Russo

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2 sanctions. We wanted to hit our housing goals,
3 but I don't know, you know, again, the
4 specifics of what the implications of this
5 would be.

6 BY MR. FRANKEL:

7 Q. But they were severe?

8 A. It was --

9 MR. COREY: Objection to form.

10 Pause before you answer the question. Give me
11 an opportunity to object so we are not talking
12 over each other.

13 THE WITNESS: So I'm sorry, can you
14 repeat the question?

15 BY MR. FRANKEL:

16 Q. The consequences could have been
17 severe to Freddie Mac if it did not meet its
18 housing goals?

19 MR. COREY: Objection to form.

20 THE WITNESS: I believe that is
21 accurate. We certainly wanted to hit our
22 housing goals. We viewed it as an important
23 objective.

24 BY MR. FRANKEL:

25 Q. It was certainly a high priority

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2 companywide at Freddie Mac?

3 A. Yes, that is an accurate statement.

4 Q. It was a high priority in your group
5 as well, the mortgage investments structuring
6 group?

7 MR. COREY: Objection to form.

8 THE WITNESS: It was usually an I&CM
9 objective, I believe, and yes, it was a high
10 priority companywide.

11 BY MR. FRANKEL:

12 Q. I'm sorry?

13 A. Companywide.

14 Q. Was there a view at Freddie Mac that
15 during the 2005 through '7 period, it was
16 becoming increasingly difficult to meet the
17 housing goals?

18 MR. COREY: Objection to form.

19 THE WITNESS: I'm not sure if it was
20 becoming increasingly difficult, although I
21 wouldn't argue with that statement. I would
22 say that it was a challenge during those years
23 to meet the housing goals.

24 I guess there were periods prior to
25 that where they were difficult as well, so I'm

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2 not sure about the statement increasing.

3 BY MR. FRANKEL:

4 Q. But it was certainly considered to
5 be difficult, a challenge?

6 A. It was a challenge.

7 Q. You mentioned earlier that Freddie
8 would meet its housing goals, both through the
9 guarantee side of the business and through the
10 PLS portfolio.

11 Is that your testimony?

12 A. Yes. That is consistent with my
13 testimony.

14 Q. With respect to the PLS side of it,
15 would it be fair to say that the PLS purchases
16 were a critical component of Freddie's efforts
17 to meet its housing goals during the 2005
18 through 2007 time period?

19 MR. COREY: Objection to form.

20 THE WITNESS: I believe they were a
21 very important element. I don't know --
22 critical, sometimes has different meanings, but
23 they were very important to that effort, yes.

24 BY MR. FRANKEL:

25 Q. Were housing goals considered in

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2 connection with executive compensation?

3 A. I believe they were, yes.

4 Q. And in order to meet housing goals,
5 would Freddie accept greater credit risk on
6 occasion?

7 MR. COREY: Objection to form.

8 THE WITNESS: Yes, I believe they
9 would.

10 BY MR. FRANKEL:

11 Q. And lower returns on its
12 investments?

13 MR. COREY: Same objection.

14 THE WITNESS: Yes, it is my
15 recollection that Freddie would be willing to
16 accept lower returns.

17 BY MR. FRANKEL:

18 Q. Let me hand you what has been marked
19 Exhibit 20445. It is a copy of the 2007 annual
20 report and attached information statement.

21 (Deposition Exhibit No. 20445 was
22 marked for identification.)

23 BY MR. FRANKEL:

24 Q. I certainly don't need you to read
25 the whole thing at this hour, but if you could

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2 take a look at the information statement, this
3 was essentially filed in lieu of a 10-K; is
4 that your understanding?

5 A. I don't recall.

6 Q. All right. Would you have reviewed
7 the annual report or information statement
8 before it was filed?

9 A. I probably would have, and I -- but
10 I probably would have focused on certain areas
11 that people had requested I look at. I, you
12 know, I wouldn't have been kind of a main
13 reviewer, so to speak.

14 Q. Take a look at Page 8 of the -- not
15 of the cover report, but of the --

16 A. Not of the cover, but the regular
17 report.

18 Q. And look about three-quarters of the
19 way down, see the statement that starts: "From
20 time to time?"

21 A. Yes, I see that.

22 Q. It says: "From time to time, we
23 make significant adjustments to our mortgage
24 loan sourcing and purchase strategies in an
25 effort to meet the increased housing goals and

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2 subgoals. These strategies include entering
3 into some purchase and securitization
4 transactions with lower expected economic
5 returns than our typical transactions."

6 Is that an accurate statement?

7 A. I believe that to be an accurate
8 statement, yes.

9 Q. Would that include the PLS
10 transactions?

11 MR. COREY: Objection to form.

12 BY MR. FRANKEL:

13 Q. Within that?

14 MR. COREY: Objection to form.

15 THE WITNESS: So I think generally
16 speaking, there may be exceptions, but the PLS
17 transactions would have typically met our
18 hurdles. This would be more true, I'm not
19 saying there were not exceptions and we might
20 be willing to make them, but they generally
21 didn't happen on the PLS side.

22 They generally happened where we
23 bought things below our return threshold on the
24 guarantee side.

25 BY MR. FRANKEL:

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2 Mac's mission is to provide liquidity and
3 stability to the US residential mortgage
4 market. The area of the mortgage market that
5 is under the greatest stress is the nonagency
6 or private label market. This includes both
7 Triple A rated and lower rated subordinate
8 tranches," and it goes on.

9 Would you read this to reflect that
10 there was a concern that Freddie Mac needed to
11 purchase more Triple A rated and subordinate
12 bonds in order to provide liquidity and
13 stability to the market at this particular time
14 given the stress that it was under?

15 MR. COREY: Same objection.

16 THE WITNESS: Again, I can't put
17 myself back at this point in time, but those
18 could very easily be just introductory
19 statements to describe, you know, the course of
20 action or recommendation.

21 I mean, I don't disagree that the
22 subprime market was under stress and that we
23 wanted to participate there, but Freddie Mac
24 also was very, you know, it was important for
25 Freddie Mac to express things in terms of its

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2 mission and so forth.

3 BY MR. FRANKEL:

4 Q. I will show you another document.

5 This has been marked as Exhibit 20448, a
6 presentation entitled: "Cost of Freddie Mac's
7 affordable housing mission."

8 (Deposition Exhibit No. 20448 was
9 marked for identification.)

10 THE WITNESS: Before you start, can
11 I ask a question?

12 BY MR. FRANKEL:

13 Q. Yeah.

14 A. So I see the date of this being June
15 4, 2009. I was no longer --

16 Q. This is after you left.

17 A. Just wanted to make sure that was
18 okay.

19 Q. I do. I wanted to ask you -- there
20 are a couple of statements in here if it's
21 consistent or inconsistent with your
22 understanding, recognizing that you had left by
23 this time period.

24 A. Okay.

25 Q. Would you agree that goal qualifying

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2 loans tended to be higher risk?

3 MR. COREY: Objection to form.

4 THE WITNESS: Generally, goal and
5 subgoal qualifying loans tended to be low to
6 moderate income, so there were goals around --
7 special affordable, which was very low income.
8 I think it is a -- I mean, I think most people
9 would agree that lower income borrowers tend to
10 be, you know, end up being more risky loans.

11 BY MR. FRANKEL:

12 Q. Lower household income borrowers
13 tend to correlate with higher default risk; is
14 that fair?

15 A. Yes. I think that's a -- there are
16 exceptions or whatever, but I think generally
17 speaking, most people would agree with that
18 statement.

19 Q. And was it your understanding
20 throughout the 2005 through 2007 time period,
21 that goal qualifying loans tended to be higher
22 risk?

23 MR. COREY: Same objection.

24 THE WITNESS: Yes, I think that is a
25 generalization I would have been comfortable

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2 with back then.

3 BY MR. FRANKEL:

4 Q. Is it fair to say that Freddie Mac
5 didn't have the investment mindset, the same
6 investment mindset as a typical PLS investor
7 during the 2005 through 2007 time period, in
8 view of its housing goal requirements?

9 MR. COREY: Same objection.

10 THE WITNESS: I think that is a fair
11 statement, but I think there are a couple other
12 factors that you can't ignore in stating that,
13 which is Freddie Mac also had the ability --
14 subprime floaters, for example, or LIBOR plus
15 20, that was their coupon or interest rate.
16 Freddie Mac could issue discount notes or fund
17 generally ten basis points lower than other
18 investors so maybe LIBOR minus 20 or minus 15
19 depending on when, so Freddie Mac had a
20 comparative advantage in buying these
21 securities anyway, because of its funding.

22 Freddie Mac also had very low
23 capital relative to other investors for these
24 securities, and so Freddie Mac could
25 essentially lever them 40 or 50, 40 to one,

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2 whereas other investors couldn't, and so
3 Freddie Mac had affordable housing goals that
4 made these more attractive to Freddie Mac than
5 they would be to other people, but Freddie Mac
6 also had some return -- risk return kind of
7 advantages that made them also more attractive
8 to Freddie Mac than other investors, so, you
9 know, I think you have to look at it in its
10 entirety to have a correct picture.

11 BY MR. FRANKEL:

12 Q. It was fair to say it was very
13 highly leveraged while you were there in the
14 '05 to '07 time period?

15 A. Well, Freddie -- leverage is -- it's
16 an interesting term, because Freddie Mac --
17 most people think of leverage as, you know, how
18 -- borrow against something. Freddie Mac never
19 had to borrow against the securities.

20 They issued discount notes or
21 long-term debt, so Freddie had economic
22 leverage like, you know, it would leverage its
23 capital relative to its asset base, but if you
24 think as leverage as borrowing leverage,
25 Freddie Mac had almost no leverage, so it's

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2 hard to -- you have to just be careful in
3 distinguishing those.

4 Q. It certainly had a low cost of
5 capital in part --

6 A. Yes.

7 Q. -- due to the --

8 MR. COREY: Let him finish.

9 BY MR. FRANKEL:

10 Q. -- implied guarantee that you spoke
11 about earlier yesterday, right?

12 A. Yes, that's accurate.

13 Q. How did that affect its investment
14 decisions with respect to PLS in particular?

15 A. So again, that helped our investment
16 decision or helped the ROEs of these purchases
17 for us, because Freddie Mac could borrow at a
18 lower rate. It had a low, you know, low
19 capital requirement for these so implicitly,
20 the returns were, you know, we could basically
21 hold very little capital against a purchase,
22 and those two factors, the combination of
23 capital and favorable financing allowed us to
24 get very good returns on these and they also
25 helped with the goals.